

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

WP(C).No. 989 of 2005(P)

PETITIONER:

**D.AJAYAKUMAR, VRINDAVANAM,
MANIPPUZHA, NATTAKAM P.O.,
KOTTAYAM.**

BY ADV. SRI.SHEJI P.ABRAHAM

RESPONDENTS:

- 1. KERALA STATE ELECTRICITY BOARD,
REP. BY THE CHAIRMAN, VAIDYUTHI BHAVAN,
PATTAM, TRIVANDRUM.**
- 2. CHIEF ENGINEER,
TRANSMISSION SOUTH, ELECTRICITY BOARD,
PATTOM, TRIVANDRUM.**
- 3. THE DEPUTY CHIEF ENGINEER,
TRANSMISSION CIRCLE, KALAMASSERY.**

BY ADV. SRI.C.K.KARUNAKARAN, SC FOR KSEB

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

WP(C) NO: 989/2005 P

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE AGREEMENT NO. 215/99-00 DT.21/12/99.

EXT.P2. COPY OF THE SUPPLEMENTARY AGREEMENT DT. 8/10/01 NO. T2B/1051/ 95/741.

EXT.P3. COPY OF THE LETTER ISSUED BY THE REPRESENTATION TO THE PETITIONER
DT. 61/00 NO. AB2/CCB/99-00/2366.

EXT.P4. COPY OF THE ORDER BY THE R1.

RESPONDENT'S EXHIBITS NIL.

True copy

tga

K.BALAKRISHNAN NAIR, J.

WPC NO.989 OF 2005-P

Judgment

The petitioner was a contractor, who was granted the work of erecting tower lines between Kuthungal and Neriyaamangalam. 50% of the said work was awarded to him and the balance 50% was awarded to another contractor. The petitioner completed the work on 24.05.2001 and the line was charged on 27.05.2001. At that time, an amount of Rs.1,00,18,719/- was remaining unpaid to him. So, he filed Writ Petition (C) No.34556/02 before this Court. The Judgment in that Writ Petition is not produced in this Writ Petition, but both sides submitted that there was a direction in it to pay the admitted amounts due to the petitioner. Even thereafter, no amount was paid to him. So, contempt proceedings were initiated. Pursuant to the same, an amount of Rs.22,62,465/- was paid. Later, on 30.04.2004, an amount of Rs.58,94,957/- was also paid. The KSEB retained an amount of Rs.18,61,297/-. Further, the above amounts were released without any interest. So, this Writ Petition was filed, praying for a direction to release the balance amount with interest and also to pay 18% interest for the balance amount paid earlier.

2. The Electricity Board has filed a counter affidavit on 07.03.2005, in which it is submitted that the dispute regarding withholding of Rs.18,61,297/- will be referred to the Chief Technical Examiner through the Principal Secretary to Government. This

Court, by interim order dated 11.03.2005, directed the KSEB to submit, what decision was taken in the matter by the Chief Technical Examiner. While so, the Chairman of the Board himself took a decision in the matter and issued Ext.P4 order on 19.09.2005. So, the petitioner amended the Writ Petition, incorporating the challenge against the said order. The petitioner submits, Ext.P4 is illegal and arbitrary and therefore, liable to be set aside and the respondents may be directed to pay the entire balance amount due to the petitioner with interest and also the interest due for the amounts already paid.

2. The Electricity Board as filed an additional counter affidavit apart from the earlier counter affidavit, resisting the prayers in the amended Writ Petition. I heard the learned counsel on both sides. The learned counsel for the petitioner submitted that the Contractor, who was awarded the balance portion of work was paid the entire amount due with interest, pursuant to the Judgment of this Court. The learned Standing Counsel for the KSEB submitted that the petitioner claimed additional amounts from the Board, stating that he has undertaken certain additional works for which no rates were fixed in the estimate of the contract. The said claim was found to be untenable and therefore, the amount of Rs.18,61,297/- was withheld, it is submitted.

3. The claim of the petitioner is arising under a contract. Therefore, whether he is eligible to get the entire amount as claimed or not, is a matter which cannot be resolved under Article 226 of the Constitution of India. His claim for interest for the amounts already paid is also not maintainable under Article 226. For that, the remedy of the petitioner was to move the civil court. In view of the above position, the Writ Petition is dismissed without prejudice to the contentions of the petitioner and his right, if any, to move the competent civil court.

08.08.2007

K.BALAKRISHNAN NAIR,JUDGE

sta